

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

8:18-CR-0076  
(GTS)

MARIA CRUZ LANCHEROS,

Defendant.

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APPEARANCES:

OF COUNSEL:

HON. GRANT C. JAQUITH  
United States Attorney for the N.D.N.Y.  
Counsel for the Government  
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ALEJANDRA N. PAULINO, ESQ.

GLENN T. SUDDABY, Chief United States District Judge

**DECISION and ORDER**

Currently before the Court, in this criminal prosecution of Maria Cruz Lancheros (“Defendant”) for one count of transporting an alien in violation of 8 U.S.C. § 1324(a)(1)(A)(ii), one count of aiding and assisting an alien to enter the United States in violation of 8 U.S.C. § 1327, and one count of conspiracy to transport an alien in violation of 8 U.S.C. § 1324(a)(1)(A)(ii) and (a)(1)(A)(v)(I), is Defendant’s motion to suppress statements made to officers during interrogation. (Dkt. No. 29.) For the reasons set forth below, Defendant’s motion is denied.

## **I. RELEVANT BACKGROUND**

Because this Decision and Order is intended primarily for the review of the parties, the Court will assume the reader's familiarity with this action's procedural history and the general events giving rise to Defendant's arrest.

### **A. The Parties' Arguments on Defendant's Motion to Suppress**

#### **1. Defendant's Memorandum of Law**

Generally, in her memorandum of law, Defendant (who does not understand English) argues that her confession/admissions were obtained in violation of her *Miranda* rights because the Spanish translation of those rights that was given to her was "not adequate or sufficient for defendant to make a knowing waiver of her right to remain silent and wait for counsel to be present." (Dkt. No. 27, Attach. 2, at 3 [Def.'s Mem. of Law].) Defendant therefore argues that her waiver of her *Miranda* rights was not knowingly and intelligently made. (*Id.*)

#### **2. The Government's Opposition Memorandum of Law**

Generally, in its opposition memorandum of law, the Government asserts two arguments. (Dkt. No. 29, at 6-10 [Govt.'s Opp'n Mem. of Law].) First, the Government argues that the vehicle Defendant was in was properly stopped because Border Patrol officers had reasonable suspicion based on Jose Cardona's (the driver of the vehicle) previous suspicious activity at the border in the same vehicle. (*Id.* at 6-7.) The Government also notes that Defendant has not challenged the vehicle stop, and therefore any statements made by Defendant as to her identity and citizenship during that stop should not be suppressed.

Second, the Government argues that Defendant validly waived her rights pursuant to *Miranda*. (*Id.* at 7-10.) More specifically, the Government argues that (a) after invoking her

right to counsel and being advised of her *Miranda* rights, Defendant voluntarily initiated further conversation with the Border Patrol agents by asking whether her boyfriend was speaking with them, after which they provided Defendant with a new set of *Miranda* warnings (which Defendant waived) and then interviewed her, and (b) Defendant was on both occasions administered the *Miranda* warnings in Spanish and there is no indication that she did not understand those rights and waive them knowingly and voluntarily. (*Id.*)

## II. RELEVANT LEGAL STANDARD

Because the parties have, in their respective submissions on Defendant's motion, demonstrated an adequate understanding of the legal standard governing Defendant's motion to suppress, the Court will not summarize those legal standards in this Decision and Order, which is intended primarily for the review of the parties. Rather, the Court will merely refer to certain points of law and cases where necessary in its analysis of Defendant's motion in Part III of this Decision and Order.

## III. ANALYSIS

After carefully considering the question of whether Defendant knowingly, intelligently, and voluntarily waived her *Miranda* rights, the Court answers this question in the affirmative for the reasons stated in the Government's opposition memorandum of law. (Dkt. No. 29, at 6-10 [Govt.'s Opp'n Mem. of Law].) To those reasons, the Court adds the following analysis.

Defendant's assertion that the Spanish translation of the *Miranda* rights that was provided to her was inadequate is wholly conclusory and unsupported by any evidence.<sup>1</sup>

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<sup>1</sup> The Court notes that Defendant's motion is not supported by an affidavit from herself; rather, the motion is supported only by an affidavit from counsel, who lacks personal knowledge of the events in question. (*See, e.g.*, Dkt. No. 27, Attach. 1, at ¶ 8 [Paulino Aff.].) As

Particularly, Defendant does not specify in what ways the translation was inadequate or indicate how the translation itself impacted Defendant's ability to understand her rights. The mere fact that Defendant does not speak English does not, by itself as a general matter, present a language barrier that would impair her rights. Rather, as at least one court in this Circuit has recognized that "the determination is not difficult when the suspect is advised of his rights in a language he understands." *United States v. Santiago*, 720 F. Supp. 2d 245, 252 (W.D.N.Y. 2010).

Additionally, to the extent Defendant intends to suggest that the Spanish translation was inadequate because it was perhaps not an exact translation of the English version, such adherence to a certain form is irrelevant so long as the specific rights are conveyed to the accused in an intelligible fashion. *Avincola v. Stinson*, 60 F. Supp. 2d 133, 159 (S.D.N.Y. 1999) (collecting cases). Defendant has offered no evidence that the relevant rights were not conveyed to her in an intelligible fashion by the Spanish translation. Rather, the advisement-of-rights form signed by Defendant appears to have informed her that (a) she had the right to remain silent, (b) anything she said could be used against her in a court or immigration proceeding, (c) she had the right to speak with an attorney both before and during questioning, (d) if she did not have money to afford an attorney, one could be appointed to her before questioning, and (e) if she chose to answer questions without a lawyer present she still had the right to cease answering questions at

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a result, the Court may decide Defendant's motion without holding an evidentiary hearing. *See, e.g., United States v. Gillette*, 383 F.2d 843, 848 (2d Cir. 1967) (holding that a suppression hearing was not warranted where the only evidence was an attorney's affidavit); *United States v. Ventura*, 97-CR-1251, 1998 WL 186737, at \*1 (S.D.N.Y. Apr. 17, 1998) (denying motion to suppress without a hearing because the defendant submitted only an attorney's conclusory affidavit); *United States v. Ruggiero*, 824 F. Supp. 379, 393-94 (S.D.N.Y. 1993) (denying motion to suppress because, *inter alia*, the defendant's "submitted attorney's affidavits," were "completely inadequate to raise a factual issue justifying a hearing"), *aff's sub nom., United States v. Aulicino*, 44 F.3d 1102 (2d Cir. 1995).

any time. (Dkt. No. 29, Attach. 4; Dkt. No. 29, Attach. 4.) Defendant's signature also acknowledged that she had read and understood those rights, among other things. (*Id.*)

Of note, Defendant does not argue that the arresting agents spoke to her only in English throughout the relevant time; to the contrary, the statement that Defendant was advised of her rights, asked for a lawyer, but then waived her right to talk to a lawyer and "proceeded to talk with agents" suggests that at least one of the agents present was communicating with her in a language that was mutually understood. (Dkt. No. 27, Attach. 2, at 2 [Def.'s Mem. of Law].) Indeed, the Government notes in its opposition memorandum of law that Agent Lopez (who is a native Spanish speaker) provided the *Miranda* warning to Defendant in Spanish and conducted the interview in Spanish, including translating Agent Jenkins' English questions into Spanish and Defendant's Spanish answers into English. (Dkt. No. 29, at 6 [Govt.'s Opp'n Mem. of Law]; Dkt. No. 29, Attach. 1, at ¶¶ 2, 8 [Lopez Aff.].) Given that Defendant was provided all information in Spanish by a Border Patrol agent familiar with that language, Defendant cannot claim that she did not understand the context in which she signed the *Miranda* statement as the result of her inability to understand English.

Lastly, Border Patrol Agents Lopez and Jenkins both state in their affidavits that Defendant was questioned in a conversational tone, that she was repeatedly asked throughout the interview whether she wanted to speak with a lawyer, and that she did not state at any point during the interview that she did not understand the agents' questions. (Dkt. No. 29, Attach. 1, at ¶¶ 9-11 [Lopez Aff.]; Dkt. No. 29, Attach. 2, at ¶¶ 6-9 [Jenkins Aff.].) All of these factors further suggest that Defendant's waiver of her *Miranda* rights was voluntary. *See United States v. Taylor*, 745 F.3d 15, 23 (2d Cir. 2014) ("We look to the totality of circumstances surrounding

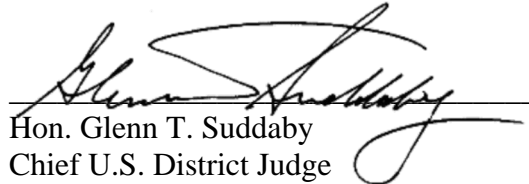
a *Miranda* waiver and any subsequent statements to determine knowledge and voluntariness.”).

In sum, there is simply no evidence to support Defendant’s assertion that her waiver of her *Miranda* rights was not knowingly or intelligently made because of some inadequacy in the Spanish translation of those rights or her inability to speak English. For all these reasons, Defendant’s motion must be denied.

**ACCORDINGLY**, it is

**ORDERED** that Defendant’s motion to suppress (Dkt. No. 29) is **DENIED**.

Dated: December 21, 2018  
Syracuse, New York

  
Hon. Glenn T. Suddaby  
Chief U.S. District Judge